

**TESTIMONY**  
**of**  
**DAVID OBEY**  
**before**  
**THE SELECT COMMITTEE ON HOMELAND SECURITY**  
July 17, 2002

Mr. Chairman and Members of the Committee, I appreciate the opportunity to testify before you today. I know you understand that on this issue there can be no Democrats and no Republicans, no liberals and no conservatives. We are only American legislators with the sworn duty to do what is best for the country, what is consistent with the Constitution.

My thoughts on Homeland Security are expressed in the recommendations of the Appropriations Committee and in the letter that Congressman Waxman and I sent to Governor Ridge last week as well as in the testimony that I am about to deliver.

I will divide my remarks today into two segments. First, I would like to discuss proposals regarding a new Department of Homeland Security that would affect the role of the Congress in appropriating money. Secondly, I would like to talk about how the government's broad responsibilities with respect to homeland security could be better coordinated and structured and how the creation of a new Department would fit within that restructuring.

**Protecting the Constitution and  
Our System of Checks and Balances**

Since King John signed the Magna Carta in 1215, the notion that the executive should not have power of the purse has become increasingly central to the structure of Western Democracies. In the three months of passionate debate, conflict and compromise that led to crafting the U.S. Constitution, there is no evidence of any debate whatsoever over clause 7 of Section 9 of Article I, which states, "*No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law.*" Every one of the thirteen colonies had already adopted constitutions that gave their individual legislatures "the power of the purse." Providing to the Congress the central authority over spending was simply so universally agreed to it was not even a topic of discussion.

Congress was quick to use those powers and to specify in great detail how appropriated funds could and could not be spent in connection with the establishment of a standing army to defend against a possible invasion by France in the late 1790s. Those powers were undiminished during the War of 1812 when the nation was attacked and both the Capitol and the White House were burned. The Congress' authority over spending remained intact through the Civil War and through two World Wars. It is therefore surprising and disturbing that the administration would choose to revisit a decision so central to our Constitutional heritage.

Simply put, no member of the executive branch at any time in the history of this country has ever had the authority to terminate programs, sell assets and redirect resources without consultation with the Congress that the legislation before this Committee would grant the new Secretary of the Department of Homeland Security. The proposed legislation provides four basic authorities:

First, Section 803(c ) of H.R. 5005 provides that the President may upon enactment and prior to the actual transfer of existing agencies and activities to new Department, transfer 5% of the funds appropriated to those agencies and activities for use in setting up the bureaucratic superstructure envisaged in the act. What this essentially provides is a totally free hand to the Secretary and his staff in structuring the new Department without consultation or involvement of the Congress.

The record of the last six months in setting up new homeland security activities should give the Congress and the American people serious pause about providing such authority. The new Transportation Security Administration has put forth plans indicating that it plans to employ more than 70,000 people simply with respect to the airline safety portion of its mission. Many of us were deeply concerned when we learned that the agency planned to locate more than 800 of those people here in their Washington headquarters. Adding to that concern was the fact that they planned an average salary for the employees of that huge headquarters of more than \$90,000 a year. That is not the average for the senior managers but for all employees including stock clerks and secretaries. That is a higher average salary than is paid by the Executive Office of the President within the White House and it is higher than the average salary paid at the Supreme Court.

Those concerns grew further when it was learned that the size of the contemplated headquarters of this operation had grown from the original 800 employees to more than 1200 even after the agency had been criticized for being top heavy. Certainly nothing spoke more clearly to the lack of administrative and fiscal discipline than the decision by the agency to spend more than \$400,000 for redecorating the offices of the Director and his staff at the same time they were claiming to be critically short of funds.

The broader strategic decisions have also been replete with examples of poor judgment. Initial salary schedules would have resulted in the guards employed to protect the passenger and baggage screening operations being paid more than \$85,000 a year—more than the airport managers, mayors or police chiefs in many of the communities they would be located in. Equipment for baggage screening was ordered without any attention to the facilities that would have to be constructed to house the equipment. Since facilities take longer to construct than it takes to manufacture equipment we are almost certain to have baggage-screening equipment sitting in warehouses for some extended period of time waiting for a decision to be made with respect to where it will be installed. Plans also called for, and still do call for the hiring of 3500 “shoe carriers” to collect and scan shoes that set off magnetometers. This is in spite of the fact that magnetometers that are sensitive enough to screen out the false alarms caused by shoes can be purchased for a fraction of the first year’s salary of the “shoe carriers.” And while decisions like this were being made, the agency failed to request funds which would allow the full strengthening of cockpit doors on schedule or permit sky marshals to communicate with their superiors on the ground.

These are only some examples of the kinds of decisions that we have already seen with respect to the organization of homeland security activities. We would be naïve to expect that we have seen the last of these and we would be derelict in our duty as a Congress if we did not maintain close vigilance about how tax dollars are used in this department. This is particularly true given the grandiose nature of the hierarchy called for in the Administration’s proposed Department. H.R. 5005 would create a Secretary and Deputy Secretary, 5 Under Secretaries, up to 16 Assistant Secretaries, a Director of Secret Service, a Commandant, an IG, and a CFO and on and on- making it one of the largest sub cabinet operations in Washington.

Even more disturbing is the authority requested in Section 803(e) of the bill, which states that appropriations balances shall be transferred to the

Secretary of Homeland Security for appropriate allocation “notwithstanding the provisions of section 1531(a)(2) of title 31, United States Code.” This in effect provides the Secretary with the authority to terminate any program or activity contained within any agency or office transferred to the new Department and to spend the funds on any activity within the very broad jurisdiction of this Department without regard to law or act of Congress. If he unilaterally concludes that headquarters staffing at the Transportation Safety Administration is a higher priority than control of boll weevils or other agriculture pests those programs could be eliminated before the Congress ever had a chance to enter the discussion. If he decided that marine safety instruction programs or maintenance of right of way programs at the Coast Guard would make a good bank for funding his own private intelligence operation, we would simply have to accept his decisions. We have never done business this way in the past and there is no reason to start now.

Another authority requested is the on going authority to transfer funds between accounts even after fiscal 2003. Section 733(b) permits up to 5% of appropriated funds to be transferred between programs within the Department. While there is precedent for providing limited transfer authority among accounts within a number of agencies and Departments they are generally confined to transfers between activities that have relatively similar objectives and purposes. This provision would permit transfer of funds intended for international adoption programs to be used for pet store regulations or funds intended for counter narcotics operations to be used for hurricane cleanup. Because of the proposed size of this Department, the total amounts that could be made available for activities that the Congress might find low priority would be huge.

Finally, the Administration requests the extraordinary authority to sell assets without prior approval, to withhold the proceeds of those sales from the Treasury of the United States and to then spend them on priorities which they alone would identify and which would require no appropriations from Congress. This would include for instance an extensive portfolio of Coast Guard properties—some of which are quite valuable—that could be sold off and used for any acquisition or activity that the Congress for whatever reason had been reluctant to provide funding for. This again is aimed at weakening the checks and balances that have served this country well for more than two centuries. It is akin to the thinking that led corporate managers in the United States over the past several decades to seek boards of directors that would serve as little more than rubber stamps for the decisions of CEOs and their appointed minions. It

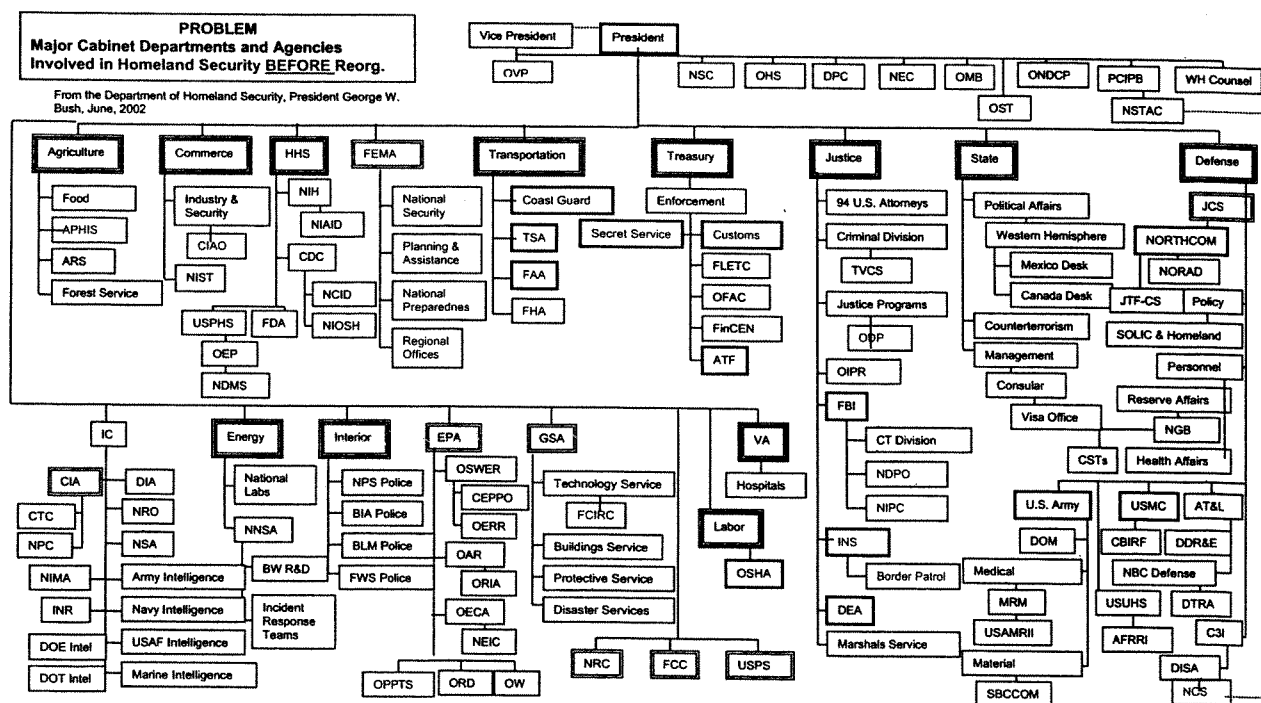
was the wrong direction for American business and it is certainly the wrong direction for American government.

## Maintaining Government Coordination and Creating a Department that is Lean, Mean and Well Focused

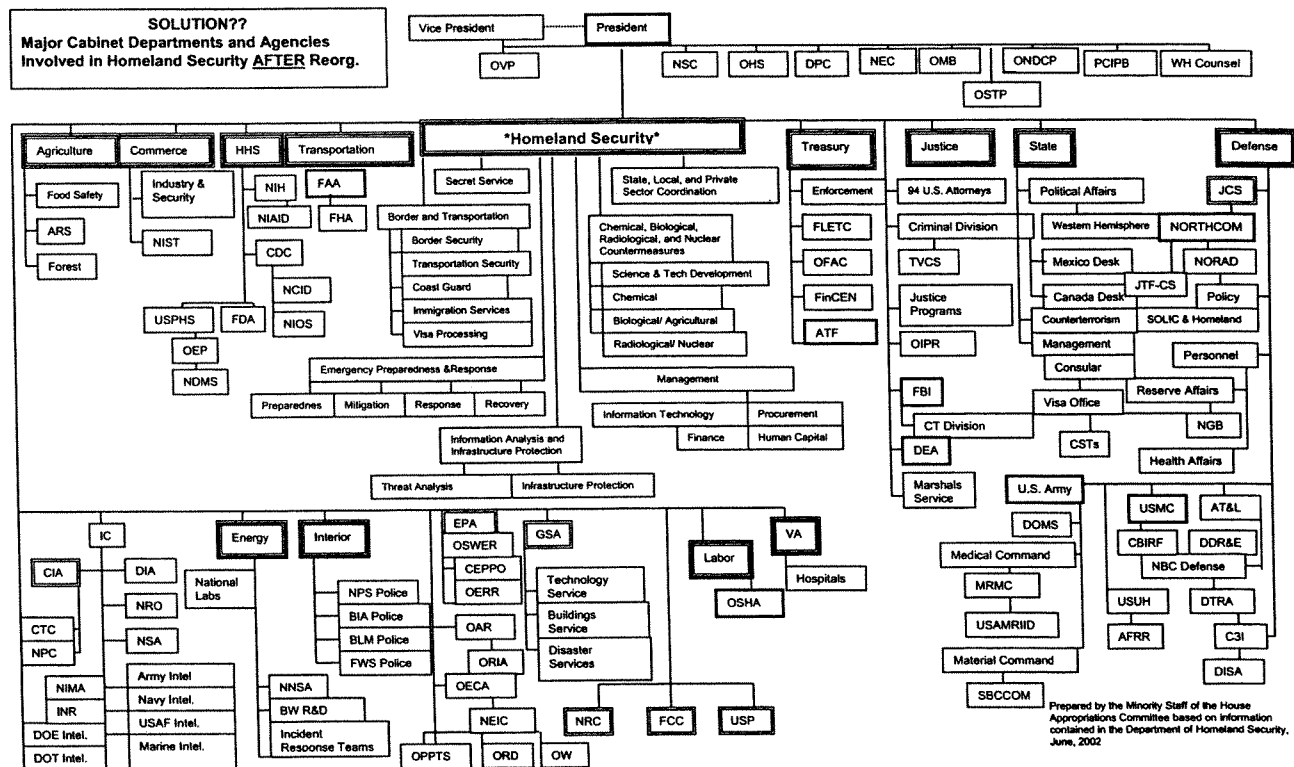
While I feel strongly about how this new Department might be financed, I feel equally strongly about how it will be composed and about how we will structure and coordinate the overall war against terrorism and protection of the homeland.

The first point I want to make—and I think it is an extremely important point for every member of this Committee to grasp—is that calling this proposed entity the “Department of Homeland Security” is a total misnomer. Even if we put every agency, office and activity that the White House has proposed for transfer into the new Department, it would represent a tiny fraction of overall government activities with respect to “homeland security.”

If we look at the organization chart prepared by the White House when this proposal was originally announced we see that there are currently a total of twelve departments of the federal government involved in various aspects of protecting the homeland. The agencies and offices contained in those departments and identified on that chart total 133.



This is our best effort to represent what the government-wide Homeland Security efforts would look like if a Department along the lines proposed by the White House were created.



Of the 133 agencies and offices listed on the first chart, 22 have been moved to the new department. But 111 are still outside the department! Furthermore, the most important agencies and offices in protecting the homeland are in most instances on the outside. These include the new Northern Command, the National Guard, the Federal Bureau of Investigation, the Central Intelligence Agency, along with the National Security Agency and National Imagery and Mapping Agency, the Centers for Disease Control and key elements of the Energy Department and the Drug Enforcement Agency.

This means that no matter what we do with respect to creation of a new Department, even if we move every agency and activity that has been proposed, the bulk of the government activity directed at protecting the homeland will still

be outside this Department. Therefore, we will continue to need to find way of strengthening interdepartmental coordination at the level of the White House. In my opinion, this is more important than whether or not we create a department.

I would propose three things to accomplish this. First, I would retain the Office of Homeland Security and make the executive order that President Bush signed creating that office statutory.

Secondly, I would elevate the director of that office to the same level within the White House as the Drug Czar, the Science Advisor and most importantly, the Director of OMB. That would require that he be subject to Senate confirmation.

Thirdly, I would give him the authority to decertify OMB budget submissions if they were inconsistent with the overall homeland security plan. In other words, OMB would not be able to go forward with budget submissions to the Congress without the signoff of the Director of Homeland Security. If the two directors cannot reach agreement, then the argument gets passed up to the President. That would place a check on the OMB director but it would also ensure that any decision involving a tradeoff between the security of the American people and additional spending would be decided at the highest level.

I think that the debate that we have been having in this town over how we restructure government and expand our capacity to protect ourselves has been far more sterile and far less substantive than the nation deserves. That by and large has not been the fault of the Congress. I think members of both parties have for the most part been very thoughtful and have brought good ideas to the table. But I think the position of the executive branch has been far too dominated by analysts at OMB whose overall worldview and knowledge about security issues is not commensurate with their knowledge about budgets. We need both perspectives in order to make the right choices and we need both perspectives to be considered at both ends of Pennsylvania Ave.

Having said that, I would support the creation of a new department to handle some portion of the security problems facing the country. If done properly, such a department could increase the efficiency and coordination between certain key activities needed to protect us against future terrorist attack. On the other hand, I would urge the committee to carefully weigh the fact that consolidation of disparate agencies and activities into single huge department could create a bureaucratic morass that not only would waste large sums of

taxpayer money but also would seriously impede existing efforts to protect the American people.

There are three principles that I think the Congress should look to in attempting to decide the size and shape of the new department if there is to be one.

***First, does a proposed transfer of an agency or activity to the new Department increase the focus and coordination of government counter terrorism activities?***

As I already pointed out, H.R. 5005 moves less than two dozen of 133 agencies and offices involved in homeland security into the new department. The overwhelming majority of such agencies and activities are outside the proposed department. The question that must be asked is whether the agencies proposed for transfer form a good cluster from a management perspective. Can the proposed department manage these various programs and maintain a strong focus or are they going to have to maintain so many unrelated programmatic objectives that no one will really understand what is going on inside the Department?

I think any Department that must deal with earthquake recovery, licensing pet stores, cleaning up oil spills, protecting our wine producers from the Glassy Winged Sharp Shooter, international adoption policies, ice breaking and collection of tariffs has got too much on its plate before it even begins to think about combating terrorists.

I think there is a need in this government to more tightly weave the activities of the various agencies involved with security at our borders and at ports of entry. There is a portion of the programs proposed for inclusion in this Department that is already largely focused on that set of issues. The immigration side of the INS, the Customs Service and the Transportation Security Administration all fit that description.

Once you get past those three activities you start dealing with agencies that are only partially involved in border security. They are agencies that have very large and important responsibilities that have little or nothing to do with counter terrorism. For instance, APHIS has some inspectors in airports, but that is only a fraction of the 8,000 employees who are attempting to control plant and animal diseases that are already here. APHIS needs to work more closely with



customs and immigration on cross border issues but they also must remain close to the farm community and they will probably always spend the large majority of their time on diseases that are already in the country than those that are on the outside.

Like APHIS, most of these agencies will have a wide range of problems that will inject their own set of nightmares into the management of the new department. As a result, inclusion of such agencies will likely increase administrative requirements, increase overhead expenditures and make it difficult for the leadership of the department to maintain a clear focus on security issues.

Finally, there are a number of activities that are slated for this Department that will be much more successfully managed where they are currently located than they could possibly be within this Department.

Last fall when we started thinking about bioterrorism, we realized that we had a huge resource with respect to dealing with that threat. That resource is the National Institute for Allergy and Infectious Diseases. That is where most of the basic work on AIDS research is taking place. That is where our work on the fundamental mechanisms of diseases such as Ebola and West Nile Virus is being preformed.

We are much further along in understanding infectious disease mechanisms and how the body defends itself against them, how we can aid in that defense and what the weaknesses of these various viruses and bacteria than we were twenty years ago when we were thinking about biological warfare in the context of the Cold War. We have one of the most brilliant Institute directors in the long and distinguished history of NIH, Dr. Tony Fauci, now running that institute. We realized that we could piggyback our concerns about bioterrorism on top of this wealth of new knowledge. We have the resources there to jump-start a program and be years ahead of where we might otherwise be in identifying and combating these kinds of agents. I can't think of anything that would be more idiotic than taking the bioterrorism money that we put into NIAID last year and moving it as a free standing research program to a newly created Department.

***The second test that a new department should be expected to meet is that it can be managed with a reasonable allocation of administrative resources. This committee and the Congress***

***should ask: Can this amalgamation of programs be managed without a massive diversion of resources from front line activities such as containerized cargo inspections or the identification, apprehension and deportation of illegal entrants in order to pay for a sprawling Washington-based bureaucracy?***

In the Defense community this question is referred to as the relationship between the tooth and the tail (what portion of the budget supports real on the ground war fighters and what portion is dedicated to the bureaucracy that supports them.) It is easily possible to organize government activities in such a way that the cost of coordinating the activities becomes more expensive than the activities themselves. There is ample reason to be concerned that H.R. 5005 could seriously erode resources needed to sharpen the tooth.

This is particularly true if the administration maintains its stated intention to fund all activities of the Department within the existing budgets for those activities. If that policy is followed, it will mean that most of the resources necessary to fund the activities of the Secretary, nearly 30 proposed sub cabinet positions and the staffs for each will have to be met through cuts in border inspectors, immigration enforcement and local level first responders.

There will also be costs associated with moving and costs associated buying land and constructing new buildings. CBO estimates those costs will run at least \$3 billion – I would be amazed that if in the end they are not double that and all of it will be paid out of front line efforts if we are not realistic about the price tag from the outset.

***Thirdly, will the reorganization disrupt highly sensitive security functions during critical threat periods?***

There is a reason that the Executive Reorganization Act of 1947 took place in 1947 and not 1944. The consolidation of the War Department and the Navy may have created more efficiency and better coordination of defense activities in the long term but it certainly had significant short-term costs with respect to both of these goals. Similar disruptions are inevitable in any reorganization.

The severity of such disruptions and time lost resulting from reorganization will vary based on the amount of administrative change

envisaged for a particular program or activity. Simply changing the chain of command involves a relatively small loss of work effort. Changing network servers and phone systems and phone numbers adds to the loss in terms of short-term performance. Relocating facilities, restructuring personnel assignments and lines of authority often entail dislocations that can take months or even years to fully recover from. If there is a clear case for greater focus and long term efficiency these costs may be acceptable so long as they do not reduce performance during periods of potential threat.

Any reorganization should carefully weigh these factors with respect to both the entities to be transferred to the new department and the timing of that transfer.

### **Other Considerations**

In addition to commenting on the structure of the department, I would also point out that this proposal contains ill-advised exemptions from good government laws, Civil Service laws, whistle-blower protection, and procurement rules, and it contains an exemption from the Freedom of Information Act. There is no reason to do that as the Freedom of Information Act already provides exemptions for national security information, for sensitive law enforcement information, and for confidential business information. Agencies and industries could deny the public needed access to basic information about health and safety by simply laundering that information through this new agency.

On another front, this bill also deals with the question of the organization of our collection and analysis of intelligence. I think we clearly have a problem in that area, but I am not convinced that setting up another parallel organization will solve that problem. I think the problem can be best resolved by taking it head on and solving it at its core. Our biggest need right now is not a new organization table. We have knitted together a group of organizations that can meet our needs relatively well if we honestly assess their failures and make the appropriate adjustments.

One adjustment that we need to make as rapidly as possible is a much greater language capability than we now possess. There are literally thousands of pages of information that we have collected that is sitting on floors, in files, and on desks throughout the government unread because we lack adequate resources to screen the raw material and adequate language skills to do the

translating. There is also a great deal of intelligence which we have only partially exploited or we derive inaccurate intelligence from because the language skills we have are not good enough to get a really accurate translation.

Another adjustment is to recognize that our most important agency in terms of countering threats from within the country, the FBI, currently has three serious weaknesses. First, the FBI has been more focused on law enforcement than counter-terrorism and it does not have the analytical capabilities that you need if you are going to put together the massive amounts of information that is now flowing through the system. That is not a critical need when you are dealing with thousands of largely unrelated criminal acts. It is a critical need when combating large-scale terrorist networks. The second weakness is the totally dysfunctional information technology systems at the Bureau. The third is a general lack of skilled investigators, particularly in certain areas such as cyber-crime.

We can't create an organization to do the FBI's job. We have to fix the FBI. If we create a parallel organization that does domestic threat analysis we may be compounding the difficulty of fixing the FBI.

In closing, I would strongly urge you not to overreach. Do what is essential, get our strategy in place first for dealing with terrorism, then make whatever additional adjustments are needed down the line. Don't grab the first tomato out of the box. Reorganization will only improve our capability to protect ourselves if it is done well. It can easily damage that capability if it is done poorly.

And don't throw away our separation of powers and our system of checks and balances because some hotshot downtown says it will help catch Bin Laden. It won't. It is the same old prescription that some of these people have offered for one problem after another. Leave it all up to the executive branch and the problem will get solved. That has not happened with respect to transportation security and it won't happen elsewhere. Good agencies welcome Congressional interest and Congressional input. Good policy comes from open discussion and the fusion of different viewpoints.

Corporations got in trouble because the CEOs, the CFOs, and the accountants ran amuck without adequate restraint by corporate boards. In government, the President is the CEO, OMB and the agencies are the rough

equivalent to the CFO and the management team. Congress is the board of directors. We need to do our duty.

Don't salute the first draft you get. Think about it then think about it some more. Listen to advocates then listen to devil's advocates. The country that you will be protecting is your own.